

**Members present:** Vern Gardner, Craig Wilson, Brian Boyle, Brett Costa

**Members absent:**

**Staff:** Heather Ross, Code Enforcement Officer

The meeting was called to order at 7:06 p.m.

Mr. Gardner advised the applicant there are only four members of the Board, therefore four like votes are needed for the application to be approved. The applicant agreed to continue.

**Mr. Wilson** noted Title 16.1.5.2.F.2-4 authorizes the Board of Appeals to hear the following Variance and Administrative Appeal. He suggested that the Board hear the Administrative Appeal first or table the Variance request. He read from the code whereby there is no 'use variance' allowed in Kittery as outlined. The Board could consider Title 16.7.3.4 – Discontinued Resumption Prohibited. This provision does not apply to the resumption of a use of a residential structure where it can be demonstrated that the structure has been used or maintained for residential occupancy during the preceding five (5) year period. Board members agreed to begin with review of the Administrative Appeal.

**ITEM 1 – Thomas Plummer – 135 Old Post Road, Map 14 Lot 11, C-3**

Thomas Plummer requesting an Administrative Appeal to the terms of Title 16 Section 3.2.11.C.3 in order to convert an existing commercial use to a previous residential use as a single family dwelling.

Mr. Plummer testified that Jim Noel, former CEO, told him if he maintained the integrity of the residential structure and not modify the building to a more commercial type use, a return to residential use would not be a problem. The neighborhood is primarily residential though in a Commercial zone. There has been no interior or exterior modification to the structure. There is still a bed upstairs and a refrigerator in the home. He had always intended to sell the building as a residence. The building is on a small nonconforming lot without municipal sewerage, is too small for commercial use, and the only interest shown is for use as a residence.

**Public Hearing:**

Alan Newson, Newson Associates, noted the structure has always been retained as a 2 bedroom 1 ½ bath home, with the living room used as an office.

Calista Kiley, Alfred, stated she is in favor of granting the appeal as there is insufficient parking for a commercial/business uses and there no municipal sewerage for a commercial use. There being no further public testimony, the CEO stated:

1. This is a nonconforming lot with nonconforming structures in a C-3 zone;
2. The majority of the lots fronting on Old Post Road are residential;
3. The structure was previously a single family residence and has been kept intact as such, and the exterior has not changed;
4. Single family use is not an allowed use in the C-3 zone;

Mr. Boyle noted it appears the intent was to retain the building as a residential use and is inclined to grant the request.

Mr. Wilson noted the applicant has testified all residential uses have been retained. Unless otherwise proven, it appears it was maintained for residential use. The interior, the grounds and the exterior have not been altered. He expressed his support in granting the Administrative Appeal.

Mr. Gardner recalled a gas station on Route 236 that was abandoned, though the gas tanks were maintained, and the BoA granted the continued use of the facility as a gas station. He believes precedent

has been set in this regard. Mr. Wilson noted a building that was a residential use, then a treatment facility, is now a residential use again. Mr. Gardner explained the Comprehensive Plan Update Committee is considering re-zoning the area that fronts Old Post Road to a residential zone.

Mr. Boyle moved to grant to Thomas Plummer an Administrative Appeal to the terms of Title 16.3.2.11.C.3 in order to convert an existing commercial use building to a previous residential use as a single family dwelling for a structure located at 135 Old Post Road, Kittery, Map 14 Lot 11, in the C-3 zone, with no conditions.

Mr. Costa seconded

Motion carried unanimously

#### Findings

1. Mr. Thomas Plummer, representing himself, requested an Administrative Appeal to the terms of Title 16.3.2.11.C.3 in order to convert an existing commercial use to the previous use as a single family dwelling.
2. The building was bought in 2004 and converted for financial advising business and was told at that time by CEO Jim Noel that if the building was not altered it could be returned to residential use
3. The integrity of the building was not modified inside or outside;
4. The surrounding area is primarily residential and there is no municipal sewerage to the lot;
5. The property is for sale, but there has been no interest shown for use as a commercial building, only residential;
6. There was public testimony in favor of the Appeal. Mr. Alan Newson testified the structure remains as a 2 bedroom 1 ½ bath house. Calista Kiley testified other uses allowed in the zone do not appear to be appropriate for this location.
5. The CEO noted this is a nonconforming lot with nonconforming structures in a C-3 zone;
6. The majority of the lots fronting Old Post Road are residential;
7. Two other cases were discussed that appeared to set precedent;
8. The Chairman stated the Comprehensive Plan Update anticipates recommending this C-3 zone fronting Old Post Road be re-zoned.
9. Email from Jim and Barbara Golter indicating support of the appeal (Attached)

Mr. Boyle moved to accept the Findings of Fact as read

Mr. Costa seconded

Motion carried unanimously

#### Conclusion:

According to 16.7.3.4 Discontinued Resumption Prohibited, if a structure has not been use or maintained for residential occupancy for a five year period, the discontinued use may not be resumed. Through testimony, the Board found the structure has been maintained for residential use and finds the discontinuance may be resumed, and overturns the CEO decision

Mr. Boyle moved to accept the Conclusion as read

Mr. Costa seconded

Motion carried unanimously

Mr. Gardner noted this approval is not the issuance of a building permit, and any aggrieved party has 45 days to appeal this decision to Superior Court.

#### **ITEM 2 – Thomas Plummer – 135 Old Post Road, Map 14 Lot 11, C-3**

Thomas Plummer requesting a Variance to the terms of Title 16 Section 3.2.11.C.3 in order to convert an existing commercial use to a previous residential use as a single family dwelling.

This request was withdrawn by the applicant.

Minutes: October 8, 2013

Mr. Wilson moved to accept the minutes of October 8, 2013 as amended  
Motion carried unanimously

Minutes: October 22, 2013

Mr. Boyle moved to accept the minutes of October 22, 2013 as submitted  
Motion carried unanimously

Election of Officers

Mr. Gardner will check with the Maine Municipal Association regarding extending his service on the Board of Appeals and/or Attorney McEachern. Discussion followed regarding Members of Necessity and terms of office per code. Members agreed to wait to elect Officers.

Discussion followed regarding a legal opinion on whether it is required to provide a written statement as to reasons for a denial by the CEO. It was stated that a written, dated decision should be provided by the CEO. Regarding appeal periods, Attorney McEachern stated the 45-day appeal period begins at the time of the Board of Appeals original decision.

Mr. Wilson moved to adjourn  
Motion carried by all members present

The Board of Appeals meeting of February 25, 2014 adjourned at 8:04 p.m.

Submitted by Jan Fisk, Recorder, February 28, 2014

ATTACHMENT

**From:** "Barbara Golter" <jgo1612273@myfairpoint.net>  
**Date:** February 21, 2014 at 12:52:48 PM EST  
**To:** <kitteryceo@yahoo.com>  
**Subject: Board of Appeals Hearing Tuesday Feb 25th at 7:00 PM**

Good Morning Heather

We recently received a notice in the mail regarding a Variance and Administrative Appeal request by Tom Plummer of 135 Old Post Road.

We wish to inform you that we have no issue with the Variance and Administrative Appeal requested by Tom.

Thank you  
Jim and Barbara Golter